

In the United States Court of Federal Claims

No. 15-1307C

(Filed March 22, 2017)

NOT FOR PUBLICATION

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CELLCAST TECHNOLOGIES,
LLC and ENVISIONIT, LLC,

Plaintiffs,

v.

THE UNITED STATES,

Defendant,

INTERNATIONAL BUSINESS
MACHINES CORP.,

Defendant-Intervenor.

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ORDER

Defendants have filed a motion to stay proceedings in this case until the United States Patent and Trademark Office (PTO) determines if it will institute, on petition of the United States, *inter partes* review of certain of plaintiffs' patents. *See* 35 U.S.C. § 314. Plaintiffs oppose this motion, citing the speculative nature of any effect the PTO proceedings might have on this case --- as that office has not yet decided if it will in fact institute a review of the patents at issue --- and the prejudice plaintiffs will suffer from delay. Defendants counter by arguing that a stay will preserve the resources of all parties, and the Court's, as the *inter partes* review could moot, or at least simplify, the issues presented by this case.

As the PTO is required to decide if it will institute an *inter partes* review by May 7, 2017, the Court does not think that staying proceedings for such a short period of time would meaningfully preserve the resources of the parties, or ours. Moreover, as the institution of review is far from certain, the Court finds this motion premature at this juncture of the case. *See CANVS Corp. v. United States*,

118 Fed. Cl. 587, 593 (2014) (noting that the majority of courts deny, as premature, requests for stays made before the PTO has decided if it will institute a review). Accordingly, the defendants' motion for a stay is **DENIED**. Of course, if the PTO elects to institute the review, the Court would be willing to consider a renewed request for a stay, in light of the longer period involved and the probability that said review would assist in the resolution of this case.

IT IS SO ORDERED

s/ Victor J. Wolski

VICTOR J. WOLSKI
Judge